UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MDG INTERNATIONAL, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:07-cv-01096-SEB-TAB
	)	
AUSTRALIAN GOLD, INC.,	)	
	)	
Defendant.	)	

CASE MANAGEMENT PLAN

I. Parties and Representatives

A. Plaintiff

MDG International, Inc.

B. Plaintiff's Counsel:

Edward O. DeLaney (#4466-49)
Kathleen A. DeLaney (#18604-49)
Elizabeth A. Schuerman (#26577-49)
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Defendant

Australian Gold, Inc.

Defendant's Counsel:

Thomas F. O'Gara
Richard A. Kempf
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Indianapolis, IN 46204
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II. Synopsis of Case

A. Plaintiff's Synopsis

MDG International, Inc. is a company that distributes sun tanning products to multiple countries. On May 27, 1994, MDG and ETS, the corporate predecessor to Australian Gold, Inc., executed a distributorship agreement. ETS assigned its rights under agreement to Australian Gold on November 1, 1997. The initial term of the distributorship agreement ended on December 31, 1994, but renews automatically thereafter on a year-to-year basis.

The agreement outlines various situations that would constitute good cause for the termination or non renewal of the agreement and none of these have occurred.

Pursuant to the agreement, MDG has the exclusive right to market, distribute and sell Australian Gold Tanning Products in territories as defined from time to time. Australian Gold is prohibited from marketing, distributing or selling products inside the territory or authorizing any person or entity other than MDG to do so. In violation of the agreement, Australian Gold has knowingly and intentionally marketed and distributed Australian Gold Products to distributors who market and sell these products within MDG's exclusive territories. Australian Gold has failed to timely deliver products to MDG as required by the agreement. Australian Gold delivered products that were expired or would expire so soon as to compromise their importation, registration or saleability. MDG has suffered significant losses in sales, harm to reputation, and payment problems due to the expiration problem. Australian Gold has refused to offer the entire Australian Gold product line to MDG and has ceased current production on a 4.22 oz bottle limiting or preventing sales thereof.

These actions have prevented MDG from making sales and are making it difficult, if not impossible, to reach sales quotas for the present year. Australian Gold's actions constitute material breaches of the agreement and MDG has suffered economic losses and damages exceeding $75,000.00.

B. Defendant's Synopsis

MDG International, Inc. ("MDG") has been a distributor of Australian Gold tanning products since 1994, when it entered into a Distributorship Agreement ("the Agreement") with ETS, Inc. ("ETS"). In 1997, ETS assigned its rights under the Agreement to Australian Gold, Inc. ("Australian Gold"). The Agreement authorizes MDG to market, distribute, and sell Australian Gold products in certain specified territories. The Agreement had an initial one-year term, but automatically renews on a year to year basis as long as MDG meets the sales quota for each specified territory. The Agreement may also be terminated for various other reasons, including MDG's failure to comply with any term or provision of the Agreement.

During the course of the Agreement, MDG has failed to meet its sales quotas for two or more of its territories, resulting in the automatic termination of the Agreement as to those territories. In addition, Australian Gold has breached other provisions of the Agreement on numerous occasions, including labeling Australian Gold products without permission and employing sub-distributors for Australian Gold products without permission. Australian Gold has suffered economic damages as a result of these breaches, each of which gives Australian Gold sufficient cause to terminate the

Agreement. Further, MDG has engaged in a pattern of conduct in which it provided forecasts of product requirements to Australian Gold and then failed to order the requested products, many of which are exclusive to MDG. Australian Gold relied on the representations in MDG's forecasts and ordered production in the past based on these forecasts. By doing so, Australian Gold incurred substantial costs in the production, stocking, and storage of the products. As a result of MDG's failure to order in accord with the representations in its forecasts, Australian Gold has suffered economic damages, and MDG is liable for those damages.

III. Pretrial Pleadings and Disclosures

A. The parties have agreed to waive production of initial disclosures pursuant to Fed. R. Civ. P. 26.

B. Plaintiff shall file preliminary witness and exhibit lists on or before December 28, 2007.

C. Defendant shall file preliminary witness and exhibit lists on or before January 28, 2008.

D. All motions for leave to amend the pleadings and/or to join additional parties shall be filed on or before February 28, 2008 without leave of court.

E. Plaintiff shall serve Defendant (but not file with the Court) a statement of special damages, if any, and make a settlement demand, on or before December 28, 2007. Defendant shall serve on the Plaintiff (but not file with the Court) a response thereto within 30 days after receipt of the demand.

F. Plaintiff shall disclose the name, address, and vita of all expert witnesses, and shall serve the report required by Fed. R. Civ. P. 26(a)(2)(B) on or before August 29, 2008.

G. Defendant shall disclose the name, address, and vita of all expert witnesses, and shall serve the report required by Fed. R. Civ. P. 26(a)(2)(B) within 30 days after Plaintiff serves its expert witness disclosure; or if none, Defendant(s) shall make its expert disclosure on or before September 29, 2008.

Any party who wishes to move for summary judgment and who wishes to use expert witness testimony to support its motion for summary judgment, shall disclose the name, address, and vita of all expert witnesses, and shall serve the report required by Fed. R. Civ. P. 26(a)(2)(B) no later than 60 days before the summary judgment deadline. If the non-moving party wishes to use expert witness testimony to oppose a motion for summary judgment, such disclosures must be made no later than 30 days prior to the summary judgment deadline.

H. Any party who wishes to limit or preclude expert testimony at trial shall file any such objections no later than January 15, 2009. Any party who wishes to preclude expert witness testimony at the summary judgment stage shall file any such objections with their responsive brief within the briefing schedule established by Local Rule 56.1.

I. All parties shall file and serve their final witness and exhibit lists on or before September 29, 2008.

J. Any party who believes that bifurcation of discovery and/or trial is appropriate with respect to any issue or claim shall notify the Court as soon as practicable.

K. The parties have discussed preservation and disclosure of electronically stored discovery information. Both parties agree to cease all destruction or purging of information, electronic or otherwise, until the resolution of this dispute.

IV. Discovery and Dispositive Motions

A. Plaintiff and Defendant do not believe that this case is appropriate for full resolution by summary judgment. Australian Gold does anticipate dispositive motions with regard to some issues, but not all.

B. Select the track that best suits this case:

_X___ Track 2: Dispositive motions are expected and shall be filed by July 15, 2008; non-expert witness discovery and discovery relating to liability issues shall be completed[1] by June 1, 2008; expert witness discovery and discovery relating to damages shall be completed by November 15, 2008.

V. Pre-Trial/Settlement Conferences

The parties believe that a settlement conference with the Magistrate Judge would be helpful prior to completion of discovery. The parties agree that an early initial pretrial conference with the Magistrate Judge would be helpful.

VI. Trial Date

The parties request a trial date in March 2009. The trial is by jury and is anticipated to take ten (10) days.

VII. Referral to Magistrate Judge

At this time, all parties do not consent to refer this matter to the Magistrate Judge pursuant to 28 U.S.C. 636(b) and Federal Rules of Civil Procedure 73 for all further proceedings including trial.

[1] The term "completed," as used in Section IV.B, means that counsel must serve their discovery requests in sufficient time to receive responses before this deadline. Counsel may not serve discovery requests within the 30-day period before this deadline unless they seek leave of Court to serve a belated request and show good cause for the same. In such event, the proposed belated discovery request shall be filed with the motion, and the opposing party will receive it with service of the motion but need not respond to the same until such time as the Court grants the motion.

VIII. Required Pre-Trial Preparation

A. **TWO WEEKS BEFORE THE FINAL PRETRIAL CONFERENCE,** the parties shall:

1. File a list of witnesses who are expected to be called to testify at trial.

2. Number in sequential order all exhibits, including graphs, charts and the like, that will be used during the trial. Provide the Court with a list of these exhibits, including a description of each exhibit and the identifying designation. Make the original exhibits available for inspection by opposing counsel. Stipulations as to the authenticity and admissibility of exhibits are encouraged to the greatest extent possible.

3. Submit all stipulations of facts in writing to the Court. Stipulations are always encouraged so that at trial, counsel can concentrate on relevant contested facts.

4. A party who intends to offer any depositions into evidence during the party's case in chief shall prepare and file with the Court and copy to all opposing parties either:

   a. brief written summaries of the relevant facts in the depositions that will be offered. (Because such a summary will be used in lieu of the actual deposition testimony to eliminate time reading depositions in a question and answer format, this is strongly encouraged.); or

   b. if a summary is inappropriate, a document which lists the portions of the deposition(s), including the specific page and line numbers, that will be read, or, in the event of a video-taped deposition, the portions of the deposition that will be played, designated specifically by counter-numbers.

5. Provide all other parties and the Court with any trial briefs and motions in limine, along with all proposed jury instructions, voir dire questions, and areas of inquiry for voir dire (or, if the trial is to the Court, with proposed findings of fact and conclusions of law).
6. Notify the Court and opposing counsel of the anticipated use of any evidence presentation equipment.

B. **ONE WEEK BEFORE THE FINAL PRETRIAL CONFERENCE,** the parties shall:

1. Notify opposing counsel in writing of any objections to the proposed exhibits. If the parties desire a ruling on the objection prior to trial, a motion should be filed noting the objection and a description and designation of the exhibit, the basis of the objection, and the legal authorities supporting the objection.

2. If a party has an objection to the deposition summary or to a designated portion of a deposition that will be offered at trial, or if a party intends to offer additional portions at trial in response to the opponent's designation, and the parties desire a ruling on the objection prior to trial, the party shall submit the objections and counter summaries or designations to the Court in writing. Any objections shall be made in the same manner as for proposed exhibits. However, in the case of objections to video-taped depositions, the objections shall be brought to the Court's immediate attention to allow adequate time for editing of the deposition prior to trial.

3. File objections to any motions in limine, proposed instructions, and voir dire questions submitted by the opposing parties.

4. Notify the Court and opposing counsel of requests for separation of witnesses at trial.

Respectfully submitted,

/s/ Edward O. DeLaney____________
Edward O. DeLaney (#4466-49)
Elizabeth A. Schuerman (#26577-49)
Attorneys for Plaintiff

Respectfully submitted,

/s/ Thomas F. O'Gara___________
Thomas F. O'Gara (#19678-49)
Richard A. Kempf (#11597-49)
Peter J. Prettyman (#25057-49)
Attorneys for Defendant
(By Edward O. DeLaney Pursuant to L.R. 5.11, on Nov. 14, 2007 Mr. O'Gara consented to his signature hereon.

Dated: November 14, 2007

****

______ PARTIES APPEARED IN PERSON/BY COUNSEL ON ____________ FOR A PRETRIAL/STATUS CONFERENCE.

______ APPROVED AS SUBMITTED.

______ APPROVED AS AMENDED.

______ APPROVED AS AMENDED PER SEPARATE ORDER.

______ APPROVED, BUT ALL OF THE FOREGOING DEADLINES ARE SHORTENED/LENGTHENED BY ______________ MONTHS.

______ APPROVED, BUT THE DEADLINES SET IN SECTION(S) _______________ OF THE PLAN IS/ARE SHORTENED/LENGTHENED BY ______________ MONTHS.

______ THIS MATTER IS SET FOR TRIAL BY _____________________ ON _____________________________. FINAL PRETRIAL CONFERENCE IS SCHEDULED FOR _______________________________________ AT _______________ .M., ROOM ________________.

_____ A SETTLEMENT/STATUS CONFERENCE IS SET IN THIS CASE FOR ____________________________ AT __________ .M. COUNSEL SHALL APPEAR:

_________ IN PERSON IN ROOM _______________; OR

_________ BY TELEPHONE, WITH COUNSEL FOR ________________ INITIATING THE CALL TO ALL OTHER PARTIES AND ADDING THE COURT JUDGE AT (____) ___________________; OR

_________ BY TELEPHONE, WITH COUNSEL CALLING THE JUDGE'S STAFF AT (_____) ____________________.

______ DISPOSITIVE MOTIONS SHALL BE FILED NO LATER THAN _________ _____________________________ .

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U. S. District Court
Southern District of Indiana